

REMARKS

By this amendment, claim 23 has been amended to correct a typographical error.

No claims have been cancelled. Accordingly, claims 1-28 remain in the application.

Applicants appreciate the indication that claims 24-28 have been allowed and that claims 8-18 would be allowable if rewritten in independent form to include all of the limitations of the base claim and any intervening claims. Applicants will hold any amendment of claims 8-18 in abeyance pending disposition of the remaining claims.

Claims 1 and 3-5 have been rejected as allegedly being anticipated by the patent to Newman, U.S. 4,352,429. Applicants traverse the rejection of these claims and request reconsideration.

As noted in the specification at page one, prior to the present invention great difficulty was experienced in positioning surgical drapes beneath a patient on a surgical table. The patient must be lifted or otherwise maneuvered in order to position drapes under the patient. This can result in random sterilization or inadequate isolation of certain portions of the patient from the surgical table. The present invention addresses and overcomes these problems.

The invention comprises a surgical drape that includes a container that can be placed on the table prior to the patient being placed on the table. Thereafter, the container can be opened and a sterilized sheet can be pulled out of the container and positioned as necessary to shield desired portions of the table. In alternative embodiments, a second container and second and third sheets can be provided for additional purposes such as protection of other portions of the table or portions of the patient's body. None of the prior art cited by the examiner teaches or suggests the "pull

the surgical drape out from under the patient" feature of the present invention.

Claim 1 calls for a first, closed container having a portion that can be selectively opened to form a first opening, the first container being of a size and shape such that a patient can be placed atop the first container when the first container is placed on the upper surface. Claim 1 also calls for a first sheet to be disposed within the first container, the first sheet having first and second opposed ends, the first end of the first sheet being removable from the first container through the first opening so as to remove a desired portion of the first sheet from the container, the second end of the first sheet remaining within the container. Claims 3-5 are dependent upon claim 1 and include additional limitations that the first sheet is made of a fluid-impervious material (claim 3), a pull tab is attached to the first end of the first sheet (claim 4), and the first sheet is folded within the first container in a plicated manner (claim 5).

The patent to Newman does not disclose the foregoing features of the claimed invention and therefore cannot anticipate the invention as alleged by the examiner. Referring particularly to Figures 6 and 7 of the Newman patent, it is apparent that the patient cannot be placed atop the package 10 because the package 10 must be bent back upon itself in order for the drape 30 to be removed therefrom through the window 14. Such a manipulation of the package 10 would be impossible if the patient previously had been placed atop the package 10. Hence, Newman does not teach or suggest the claimed feature "that a patient can be placed atop the first container when the first container is placed on the upper surface" because to do so would defeat the function of Newman's device.

Moreover, it is apparent from a reading of Newman's specification that the drape

30 is removed in its entirety from the package 10. In contrast, the claimed invention calls for "the second end of the first sheet remaining within the container." This feature facilitates the proper functioning of the present invention because (1) only the desired amount of the sheet can be pulled from the container and no more, and (2) the weight of the patient will prevent unnecessary portions of the drape from being pulled out of the container. Newman also fails to teach or suggest that the drape 30 has a pull tab (perhaps because the drape 30 is removed in its entirety from the package 10) or that the drape 30 is folded and placed in the package 10 in a plicated manner (perhaps because Newman does not contemplate that only a portion of the drape 30 will be removed from the package 10).

In summary, Newman's device cannot obtain the results that the present invention does. Newman does not teach or suggest the claimed features of the invention discussed above, and therefore fails to anticipate the claimed invention. The rejection of claims 1 and 3-5 should be reconsidered and withdrawn.

Claims 2, 6, 7, and 22 have been rejected as allegedly being obvious over the patent to Newman in combination with the patents to Mixon, Alpern, Kraus, and Rothrum. Newman is the main reference in each of these rejections. Claims 2, 6, 7, and 22 are dependent upon claim 1, and therefore include all of the limitations thereof. Since Newman fails to anticipate claim 1, and indeed discloses a drape and package combination that is completely different in character and operation from the claimed invention, claims 2, 6, and 7 cannot be obvious in view of the patent to Newman and the patents to Mixon, Alpern, Kraus, or Rothrum.

Claims 19 and 20 (which depends from claim 19) have been rejected as allegedly

being obvious over the patent to Newman in combination with the patent to Mixon, while claim 21, which is dependent upon claim 19, has been rejected as allegedly being obvious over the patents to Newman and Winters. Newman is the main reference in each of these rejections.

Claim 19 is directed to a sheet for protecting portions of a patient during pre-operation preparations, the sheet being usable in conjunction with a surgical drape. The sheet comprises a first end that conforms generally to the shape of a selected portion of the patient, and a second end that is attachable to the surgical drape. The attachment between the second end and the surgical drape is severable so that the sheet can be removed and discarded when desired.

The patent to Newman does not disclose a sheet for protecting portions of a patient during pre-operation preparations. Newman's drape 30 is not shown to conform generally to the shape of a selected portion of a patient, nor is the drape 30 disclosed as having a second end that is attachable to another surgical drape. Since Newman does not discuss a second end of his drape 30 or the use of another drape, necessarily there is no teaching or suggestion that the drape 30 could be severed from the undisclosed second drape. The patent to Mixon similarly does not contain any teaching or suggestion concerning these claimed features of the invention. Hence, there is no combination of Newman and Mixon that could produce the invention of claim 19.

While Mixon discloses a sheet of fluid-impervious material as set forth in claim 20, claim 20 is dependent upon claim 19 and contains all of the limitations thereof. As pointed out immediately above, neither Newman nor Mixon teach or suggest the features of claim 19. Accordingly, the combination of Newman and Mixon cannot

produce the invention of claim 20.

An even more unobvious situation exists with respect to claim 21. Claim 21 calls for a layer of adhesive about the periphery of the sheet that permits the sheet to be attached to the patient. Winters discloses a multi-layer disposable surgical drape. The drape includes a fibrous base sheet 10, a fluid impervious plastic layer 11, and a foam material 12, all of which are bonded together adhesively. It appears that the layer 10 is intended to be disposed in contact with the patient, while the material 12 is away from the patient. See column 4, lines 33-38, where placement of surgical instruments on the material 12 is discussed. Although the various layers are bonded together, Winters is silent concerning the use of a layer of adhesive about the periphery of the fibrous base sheet 10. Because of this failure, and because both Winters and Newman fail to teach or suggest the features of the base claim (claim 19), the invention of claim 21 could not be produced by any combination of Newman and Winters.

CONCLUSION

The patents relied on by the examiner fail to anticipate or render obvious the invention claimed by applicants. The application now should be in condition for allowance. If the Examiner has any remaining questions, he is requested to telephone the undersigned attorney in order to expedite prosecution of the application.

Respectfully submitted,

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